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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ROBERT W., a Person Coming
Under the Juvenile Court Law.

B175621
(Los Angeles County Super. Ct.
No. NJ18475)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT W.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Gibson Lee, Judge. Affirmed.

Holly J. Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jaime L. Fuster and Lance E. Winters, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Robert W. appeals from an order declaring him a delinquent ward of the juvenile court after finding him in violation of Penal Code section 594, subdivision (a) (vandalism causing damage under \$400). He contends certain probation conditions are unconstitutionally vague or overbroad. We affirm.

PROCEDURAL BACKGROUND

On April 9, 2004, a petition was filed under Welfare and Institutions Code section 602 to declare appellant a ward of the juvenile court, based on the allegation that he committed the crime of vandalism causing damage under \$400 in violation of Penal Code section 594, subdivision (a). On April 30, 2004, the juvenile court found the allegation of the petition to be true. The juvenile court declared appellant a delinquent ward, placed appellant in a short term camp community placement program, and ordered a maximum term of confinement of three years four months.¹ This timely appeal followed.

STATEMENT OF FACTS

On March 22, 2004, appellant wrote graffiti on an apartment building in Long Beach. Appellant was a member of the “RKC” (Really Crazy Crew) tagging crew.

¹ Appellant had a prior sustained petition for second degree burglary in violation of Penal Code section 459. On February 25, 2004, the juvenile court placed appellant on probation for six months.

DISCUSSION

Probation Conditions

Appellant contends the following standard conditions of probation ordered by the juvenile court are unconstitutionally vague or overbroad: “Do not associate with anyone disapproved by your parents or the probation officer Do not associate with any gang members.” We conclude appellant has forfeited the contention.

The probation officer recommended that the juvenile court order these conditions of probation. Appellant did not object. He submitted on the Probation Officer’s Report.² Moreover, appellant was currently on probation, and one of the conditions of his probation was he was not to associate with anyone disapproved by his parents or probation officer.

We have previously held that constitutional vagueness and overbreadth challenges to juvenile probation conditions are forfeited if not timely asserted in the juvenile court. (*In re Josue S.* (1999) 72 Cal.App.4th 168, 170-171.) Subsequently, two appellate decisions have held that challenges to juvenile probation conditions, which present pure questions of law that can be resolved without reference to the sentencing record in the trial court, are not forfeited by a failure to raise the issue in the juvenile court, but may be raised for the first time on appeal. (*In re Sheena K.* (2004) 116 Cal.App.4th 436, 440-441, review granted June 9, 2004, S123980; *In re Justin S.* (2001) 93 Cal.App.4th 811, 814-815.) One of these decisions incorrectly characterized our forfeiture holding as limited to the reasonableness of the probation conditions. (*In re Sheena K.*, *supra*, 116 Cal.App.4th at p. 441.) A reviewing court need “not consider a challenge to a ruling if an

² Appellant does not challenge the probation conditions on sufficiency of the evidence grounds. (Compare *In re Richard K.* (1994) 25 Cal.App.4th 580, 589 [appellant’s submission on the report, without interposing an objection to the finding or order, does not waive a sufficiency of the evidence challenge on appeal].)

objection could have been but was not made in the trial court.” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) We recognize “application of the forfeiture rule is not automatic.” (*Ibid.*) Consistent with our holding in *In re Josue S.*, we decline to exercise our discretion to excuse appellant’s forfeiture.

DISPOSITION

The judgment (order of wardship) is affirmed.

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KRIEGLER, J.*

We concur:

TURNER, P. J.

ARMSTRONG, J.

* Judge of the Superior Court for the Los Angeles Judicial District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.